
1998 Wis Eth Bd 12
**IMPROPER USE OF OFFICE; USE OF STATE'S TIME, FACILITIES,
SUPPLIES AND SERVICES**

The Ethics Board advises that:

(1) A legislator may enter into a proposed agreement with a speakers bureau, without restriction from laws administered by the Ethics Board; and

(2) The legislator should be able to demonstrate that either (a) speaking invitations are unrelated to the legislator's use of office, including the title or prestige of office; or (b) compensation the legislator receives for a talk on state government issues, processes, or proposals is reasonable.

Facts

¶1. This opinion is based upon these understandings:

- a. You are a member of the Legislature.
- b. You have been contacted by a regional speakers bureau, which has proposed to contract with you to be one of its speakers.
- c. Under the agreement, the speakers bureau will list you as an available speaker for speaking engagements and, in return, receive a commission of 25% of your speaking fee.
- d. You note in your letter that you will not accept a fee from any organization that employs a lobbyist.

Question

¶2. The Ethics Board understands your question to be:

What restrictions, if any, do laws administered by the Ethics Board impose on the proposed arrangement?

Discussion

¶3. Wisconsin's Code of Ethics provides that it "does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state." §19.45(1), *Wisconsin Statutes*. The proposed arrangement with a regional speakers bureau does not, on its face, appear inconsistent with the discharge of your duties as a member of the Legislature. However, the Ethics Code does contain three provisions of which you should be aware.

¶4. Section 19.45(2), *Wisconsin Statutes*, reduced to its elements, provides:

No state public official
May use his or her public position or office
To obtain financial gain or anything of substantial value
For private benefit.¹

¶5. You are a state public official.² Section 19.45(2) means: (1) you may not use the state's facilities, services, or supplies in connection with any talk for which you receive compensation or expenses;³ and (2) you may not use the status or prestige of your office to obtain a speaking engagement.⁴

¹ Section 19.45(2), *Wisconsin Statutes*, provides:

19.45(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

² You are a state public official by virtue of §19.42(13)(c), *Wisconsin Statutes*. Section 19.42(13)(c) provides:

19.42(13) "State public office" means:
(c) All positions identified under s. 20.923(2), (4), (4g), (4m), (6)(f) to (h) and (8) to (10), except clerical positions.

The position of a member of the Legislature is identified in §20.923(2), *Wisconsin Statutes*.

³ 1996 Wis Eth Bd 4, ¶8; 1994 Wis Eth Bd 4, ¶4.

⁴ 1998 Wis Eth Bd 6, ¶5; 1996 Wis Eth Bd 4, ¶4; 1994 Wis Eth Bd 1, ¶5.

¶6. Section 19.56(3)(a), *Wisconsin Statutes*, reduced to its elements, provides:

An elected state public official
May receive and retain reasonable compensation
And actual and reasonable expenses
For the presentation of a talk
On state government issues, processes, and proposals.⁵

¶7. A payment's reasonableness is determined by the totality of the circumstances.⁶ Barring unusual circumstances, the Ethics Board presumes that compensation of \$100 or less for a meeting or talk is reasonable. The Board considers case by case the reasonableness of payments that substantially exceed \$100. Factors the Board may take into account in assessing a payment's reasonableness include the payer's relationship to the official's public position; the amount of preparation required for the presentation; the compensation the sponsoring organization provided to other participants who were not state officials; the relative importance of the presentation; and the official's history of commanding speaking fees prior to taking public office.⁷

¶8. Section 19.56(3)(b), *Wisconsin Statutes*, reduced to its elements, provides:

⁵ Section 19.56(1) and (3)(a), *Wisconsin Statutes*, provides:

19.56 Honorariums, fees and expenses. (1) Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive, or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.

(3) Notwithstanding s. 19.45:

(a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

⁶ 8 Op. Eth. Bd. 52 (1985); 8 Op. Eth. Bd. 44 (1985).

⁷ See, e.g., 9 Op. Eth. Bd. 27, 28, (1986); 8 Op. Eth. Bd. 51 (1985); 8 Op. Eth. Bd. 44, *supra*; 2 Op. Eth. Bd. 119 (1979), 84 (1978) (for a twenty-minute talk, the chair of a legislative committee should not accept more than \$100 from an organization whose members have a special interest in issues of the type usually considered by the legislator's committee).

A state public official
May receive and retain anything of value
If the official can show by clear and convincing evidence
That the payment was unrelated to, and did not arise from, holding
public office.⁸

Advice

¶9. The Ethics Board advises that:

(1) You may enter into the proposed agreement with the speakers bureau, without restriction from laws administered by the Ethics Board; and

(2) You should be able to demonstrate that either (a) your speaking invitations are unrelated to your use of office, including the title or prestige of your office; or (b) compensation you receive for a talk on state government issues, processes, or proposals is reasonable.

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⁸ Section 19.56(3)(b), *Wisconsin Statutes*, provides:

19.56(3)(b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).